

USSN 09/782,499

Office Action would be incomplete with respect to the elected subject matter, which would be contrary to the directions given for first Office Actions in the MPEP.

Since Applicant would hope that this first Office Action is complete with respect to the elected subject matter, the alleged alternative process of making has no basis in fact.

In view of the inclusion of product-by-process claims 13-15, there is no need to restrict the claims to reduce the time required to search and apply the prior art.

Therefore, the restriction requirement should be withdrawn.

Compliance with 35 U.S.C. §§ 102(a), 102(b) and 103(a)

I. Chaudhary *et al.* '232 and '120

The Examiner rejects claims 9 to 15 as anticipated by or, in the alternative, as obvious over Chaudhary *et al.* '232 (USP 6,187,232) or Chaudhary *et al.* '120 (USP 6,369,120), a divisional of Chaudhary *et al.* '232. Applicants respectfully traverse.

Both references teach foams made from one or more alkenyl aromatic polymers and one or more substantially random interpolymers prepared by interpolymerizing i) ethylene and/or one or more  $\alpha$ -olefin monomers and ii) one or more vinyl or vinylidene aromatic polymers and/or one or more sterically hindered aliphatic or cycloaliphatic vinyl or vinylidene monomers. The present invention requires that the foams be made of one or more homopolymers of ethylene, one or more  $C_3-C_{20}$   $\alpha$ -olefin polymers, or a combination thereof.

In addition, neither reference teaches how to make a macrocellular foam containing a halogenated flame retardant.

Therefore, the present invention is novel over these references.

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Both references describe an acoustic insulation foam having good damping properties. While the possibility of macrocellular foams is mentioned at column 14, lines 25-28, of Chaudhary *et al.* '120, the overall objective of that invention was to make foams having small cell sizes (*see* Chaudhary *et al.* '120, column 2, lines 5-14).

The present invention relates solely to macrocellular foams, which are defined in the application as foams having an average cell size according to ASTM D3576 from about 1.5 mm to about 15 mm (*see* page 4, lines 10-12, of this application). The examples of the invention in the cited references fall well below this range.

The Examiner refers to Comparative Example 3 in column 30 of Chaudhary *et al.* '120. With an average cell size of 0.26 mm reported in Table 4, that comparative example falls well outside the minimum cell size required by all the examined claims.

In fact, comparing the cell size reported for this comparative example with the cell size of the preceding examples shows that this comparative example containing the halogenated flame retardant has a smaller cell size than the previous examples that do not contain the halogenated flame retardant as would be expected without the benefit of the present invention.

Therefore, the present invention is not only novel, but is also not obvious from the teachings in these references.

#### Collins

The Examiner rejects Claims 9 to 15 as anticipated by, or obvious over, Collins (USP 4,323,528) in view of Applicants' own teachings at page 7, line 25, to page 8, line 11. Applicants respectfully traverse.

While many of the features mentioned in this passage correspond with those used to describe the accumulating extrusion process according to Collins, Collins does not teach item 6) (wherein the die pressure for extrusion "can only go as high as four times, preferably three times, even more preferably two times, the prefoaming critical die pressure"). The latter is Applicants' own invention as stated at page 5, lines 15-19

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of applicant's copy of the application (paragraph beginning with, However, what is critical to the process of the present invention . . . ') and described in detail thereafter. Of course, Applicants' own disclosure of their invention may not be relied upon to reject the claims as that information was not in the prior art at the time this application was filed. That is the essence of what is prohibited as hindsight analysis of the claims.

None of the cited references teach how to obtain macrocellular foams of the specified composition containing halogenated flame retardants. The ability to achieve that combination of features in a single product is a substantial technological advance in acoustic absorption foam technology.

For the above reasons, applicant believes that the claims meet the requirements for patentability and provide adequate notice to the public of what is claimed as required under Sections 102, 103 and 112. Issuance of a Notice of Allowance is respectfully requested.

In the event that any minor issues remain, Applicant invites the Examiner to call the undersigned to discuss the same. The undersigned will respond promptly to any further requirements.

Respectfully submitted,

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